



## **500.11 Civil Process and Procedures**

Number Series: 500—Operational  
Approved Date: July 30, 2018  
Review Due Date: July 30, 2021

Sheriff's Approval: Digital  
Review Frequency: 3- Years

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### **POLICY**

Hendry County Sheriff's Office will fulfill the constitutional mandated civil process in a timely and effective manner.

### **PROCEDURE**

#### **A. Administrative**

1. All civil legal process received will be delivered or forwarded to the Court Services Section in an expedient manner for distribution. Deputies/Process servers will only serve or execute legal process within the jurisdiction of Hendry County.

#### **B. Record Information**

1. The following information on all civil process (non-enforceable and enforceable) will be recorded and available for cross-reference.
  - a. Date and time received
  - b. Nature of document
  - c. Source of document
  - d. Name of plaintiff/complainant or name of defendant/respondent
  - e. Court docket/case number
  - f. Person assigned to the service
  - g. Date of assignment of the service
  - h. Date the service is due

#### **C. Service Attempts**

1. A record containing date of all service attempts of each legal process will be documented in the RMS system for the return.

#### **D. Recording/Documenting Service**

1. The following information will be recorded for all legal civil process that has been served:
  - a. The date and time served
  - b. The name of the deputy/process server
  - c. To whom the process was served or on whom executed and deputy identification number
  - d. The method of service, i.e., individual, substitute, posted, corporate
  - e. An explanation of non-service
  - f. Location individual was served, if different from address that was supplied on document

E. Receipt, Disbursement, and Audit of Funds.

1. Procedures for Money Trail

- a. All civil fees are charged pursuant to Florida Statutes 30.231.
- b. As papers and monies are received the individual in-charge of civil process shall receipt the money and papers and place a return form on the paper to be served.
- c. Once a week, all monies collected for civil process shall be submitted to the HCSO Finance Section along with a report depicting the money received, the process served, and any money outstanding. Finance will complete an internal audit.
- d. Finance will deposit into the Civil Account.

2. Audit

- a. On a yearly basis, an independent accounting firm retained by the Hendry County Board of County Commissioners audits the Civil Account.

F. Service on Sunday

1. Process shall not be served on Sunday unless authorized by Florida Statutes or by order of the court.
2. Enforcement of an injunction for protection may be served any day of the week pursuant to Florida Statutes 741.30 (8) (a).

G. Foreign Process

1. Deputies/process servers may serve process issued by a court outside the State of Florida; however, authority is limited to the service of process and will not be interpreted to permit any action against personal property, real property, or persons even though directed to do so by the out-of-state court.
2. There are remedies pursuant to Florida Statutes for out-of state orders to be domesticated through the Florida Courts, if applicable.

H. Reading Writs or Orders

1. Deputies/Process servers will read each writ or order and become familiar with its contents prior to taking action against a person or property. All writs or orders should be read carefully and directives of the court followed explicitly.
  - a. If a deputy/process server is unsure what action is to be taken, the supervisor should be consulted.

I. Personnel may not forcibly enter a premise to execute process unless covered by Florida Statute or court order.

J. Deputies/process servers will only execute an original court certified copy or Sheriff's "true copy" of process. Photocopies and facsimiles are not acceptable unless the Sheriff's Office has possession of the original, e-file, or court certified copy of the process. Original signature stamps are acceptable as long as the document is certified as an original writ/order. The only exception of serving a facsimile (fax/email) would be if the fax is an injunction for protection or Risk Protection Order. That fax/email must be sent to Hendry County Sheriff's Office by the law enforcement agency or clerk of court that is maintaining the original injunction for protection order in their records.

K. The original copy of the process must be returned to the court or agent and a copy of that order will be left with the person served by the individual serving the process.

L. Types of Service

1. Individual or Personal Service – service is delivered directly to the person named to be served. This is the preferred manner of service and may be made anywhere

- in the county (deputies) or in the Judicial Circuit (certified process servers) within the specified time period per Florida Statute 48.031.
2. Substitute Service – Service is on any person residing at the residence (place of abode) named on the process by delivering a copy to a person residing within, who is age 15 or older (need not be related) and informing them of the contents per Florida Statute 48.031.
  3. Service on a Spouse – at a location other than the residence, may be done as long as the action is not adversarial type brought on by a spouse per Florida Statute 48.031.
  4. Service on a Minor – service on a minor who is or has been married is accomplished in the same manner as that provided on an adult. Minors who have never been married can be served by serving the parent, guardian, or if one is appointed, a legal guardian or guardian ad litem.
  5. Service on a Sole Proprietorship – service may be performed by serving the individual named on the writ. If the individual cannot be found after two attempts then anyone in charge of the business may be served at the business location.
  6. Service on a Partnership – process will be served on any partner and is valid against each individual partner. If during regular business hours, the partner is not available to be served, he/she may designate an employee to accept service. After one attempt to serve a partner or designated employee, service may be made on any employee in charge of the partnership during regular business hours.
  7. Service on a Corporation – if a corporation is named to be served, i.e., ABC Corp. or ABC Inc., service may be made on the highest statutory officer of such corporation found in the county such as the president, vice president, or head of corporation. In the absence of those individuals, the cashier, treasurer, secretary, or general manager may be served. In the absence of those individuals, on any director. In their absence, on any officer or business agent residing in the state. Every Florida corporation and foreign corporation doing business in this state will designate a registered agent, and office. The office will be open between 10 A.M. and 12 noon each day except Saturday, Sunday, or legal holidays and will keep one or more registered agents for the process to be served. Signs will be posted at the corporation designating the name of the corporation and naming the registered agent. If service cannot be made on the registered agent named on the writ, due to failure to comply with the statute, and the absence is not temporary, then service may be made at the corporate place of business on any employee.
  8. Service on a Dissolved Corporation – may be served on any one or more of the directors of dissolved corporation as trustees.
  9. Service on Incompetent Persons – process against an incompetent person will be served:
    - a. By serving two copies of the process to the person that has care, custody of the incompetent person or by serving the legal guardian appointed for the incompetent person.
    - b. By serving the guardian ad litem or other person if one is appointed by the court to represent the incompetent person. Service on the guardian ad litem is unnecessary if he/she voluntarily appears, or the court orders him/her to appear without service of process on him/her.
  10. Service on Public Agencies and Officers – process against any municipal, corporation, agency, board, or commission, department or subdivision of the state

or county having a governing body, board, council, or commission or which body corporate will be served:

- a. President, mayor, chairman, or other head, or if absent,
  - b. Vice president, vice mayor, vice chairman, or other head, or if absent, any member of the governing board, council or commission.
11. Service on the State – process will be served on the State Attorney or an Assistant State Attorney for the judicial circuit in which the action is brought and sending two copies registered or certified mail to the Attorney General.
  12. Service on a State Prisoner – service is performed by serving the prisoner individually (Florida Statute 48.051).
  13. Service on labor unions – process against labor unions will be served on the president or other officer, business agent, manager or person in charge of the business of such labor organization.
  14. Service of Criminal Witness Subpoenas on Law Enforcement Officers – may be served to a designated supervisory or administrative employee at the witness' place of employment. If the agency head or highest ranking employee has designated the party to accept service provided, service complies:
    - a. If the witness is still employed at the location
    - b. If the witness is scheduled to work prior to the date of the court appearance
    - c. If the appearance date is no less than 5 days prior to the date of service
    - d. The agency head may determine the days of the week and hours of the day at the place of employment that service may be made to a representativeFlorida Statute 48.031(4a)

#### M. Enforceable Process

1. Only sworn deputies may execute orders for civil arrests or writs requiring the seizure of real or personal property.
  - a. Writ of Replevin – in executing the writ, if the sworn deputy has personal knowledge that the property, or any part, is in a building or enclosure, the sworn deputy will publicly make demand for the delivery thereof. If same is not delivered by the defendant or some other person to the deputy, the deputy will cause such building or replevy according to the writ. Upon entry, the deputy will announce his/her presence and ensure that his/her presence is known. If the defendant is not located within, the property is to be removed by the plaintiff's representative. A copy of the writ will be left at the location from which the property was removed. The locksmith will resecure the building or structure prior to the deputy's departure. If the deputy does not have personal knowledge that the property is present, the deputy will not gain entry to the property unless the deputy has a separate order from the court directing the Sheriff to enter. That separate order is also known as a "Break Order".
  - b. Writs of Execution – when a plaintiff wishes to execute their judgment against the defendant, the plaintiff must first file the writ with the State of Florida to "record" the judgment. After the writ is recorded, if the plaintiff wishes to proceed with levying against the defendant's real or personal property, the plaintiff must supply a copy of the judgment, instructions to levy, and a proper cost deposit. Once received in the Process Section, if prior judgment liens have been filed with the State, those judgments will

be “senior”. After establishing the senior writ holder’s position, interest on the execution(s) will be calculated and the execution will be assigned to a sworn Process deputy. The deputy will make demand for the amount calculated. If the defendant is unable to pay the amount demanded, the deputy will follow the instructions to levy that were supplied by the attorney/plaintiff. If property is to be seized, the deputy will conduct an inventory of all property taken into the Sheriff’s control. If the defendant wishes to pay the amount that was demanded, including all costs to date, the defendant may pay the deputy by certified check, cashiers check, money order, or cash. If the defendant has paid the required amounts, the deputy will release the property to the defendant and provide a receipt of the money collected to the defendant(s) representative. The defendant may pay the judgment amount any time prior to Sheriff’s sale. If payment is received prior to Sheriff’s sale, additional interest and Sheriff’s costs will be included up to and including the day of payoff. Once payment is received and a receipt for money collected has been given to the defendant(s) representative, the property will be released to the defendant. It is the responsibility of the defendant to pay any additional storage fees past the date of Sheriff’s release. If property seized was removed by a moving company and the defendant wishes to have it transported back to the place it was seized, the defendant is responsible for all moving cost.

- c. Writs of Bodily Attachment – upon receipt of this writ, it will be determined if the writ is for a civil action or a writ involving child support. If the writ involves child support, the writ will be sent to the civil process section for entry and service. If the writ involves incarceration pertaining to a civil order, the staff will ensure that fees including the service, levy and the cost deposit amounts are enclosed. Once the order and all fees have been processed, the writ will be assigned to a sworn process deputy for service. The deputy upon contact will the defendant may arrest and transport the defendant to the Hendry County Jail for processing as the Court Order states. If the defendant is able to purge or bond immediately, the deputy may collect payment in the form of cash, certified check or money order payable to the Sheriff of Hendry County. The deputy will complete a money receipt showing the case number, defendants name, current date, and the amount and type of payment. Once the bond/purge amount has been satisfied, the deputy will forward that bon and yellow receipt to the Civil Process Section. If the defendant is financially unable to pay the bond/purge, the deputy will transport the defendant to the Hendry County Jail to be processed.
- d. Writ of Possession – upon receipt of the writ, the sworn deputy will serve the 24 hour notice by posting on the front door or a conspicuous place. The deputy has the responsibility of making contact with the plaintiff/plaintiff’s representative in an attempt to schedule the property to be turned over to them. On the day of the final eviction, the deputy will announce his/her presence at the residence. If individuals are present, the deputy will make demand that they vacate the premises. Prior to turning the property over to the plaintiff/plaintiff’s representative the sworn

deputy will make a complete search of the premises to ensure no persons are within the building.

- e. Baker/Marchman Acts/ Ex parte Order for Involuntary Examination – upon receipt of this order, the sworn deputy will read the order and determine if the individual has violent tendencies. If so, a minimum of two sworn deputies will respond to serve the order. Unless the individual has violent tendencies or the deputy believes the individual may do harm to themselves, the deputy should elect to use discretion with restraints.
- f. Injunctions – when a sworn deputy receives an injunction, the deputy will make concerted efforts to serve the injunction the day it is received and use all practical resources available to him/her. All injunction's that include domestic, repeat, dating, sexual violence, and risk protection order will all be served in an "individual" type capacity. Sub-service and serving the respondent's attorney on their behalf is prohibited. Once the individual is served, the deputy will email or deliver a copy of the injunction to the Warrants clerk. If the email is not accessible, the deputy will call in the information to the Warrants clerk.
- g. Risk Protection Order (RPO) – when a deputy petitions the court and then legally seizes weapons for safe-keeping. These weapons can be held for a longer period of time as to be determined by the courts, see policy 700.15: Risk Protection Order.

#### N. Seizure of Property

- 1. Recording and Accountability: All property, both real and personal, received pursuant to the service of legal process, will be accounted for and documented as follows:
  - a. A description and physical location of real property.
  - b. If the seizure involved personal property, defects, scratches and marks will be noted. Any identification, serial, model, and registration number will be noted. The deputy will verify and sign the inventory. The property will be stored in a secure location. If firearms are seized, an agency property receipt will be used and the firearm(s) will be turned over to the Evidence section for storage until disposal or transfer, as ordered by the court.
  - c. The name of the person(s) or corporation (s) from whom the property was received, and the address from which the property was removed, if applicable.
  - d. If the seizure involves a motor vehicle, a vehicle tow sheet will be completed. The vehicle is towed by a private wrecker company located within the area of the county the vehicle is seized. The vehicle is stored at the wrecker company's impound yard.
- 2. Property Disposal: Property acquired through the service of legal process will be disposed of pursuant to Florida Statute chapter 56 and court order. In executing enforceable writs, the Sheriff is required to take some positive action against a person or thing. Sworn deputies will execute enforceable writs.

#### O. Non-Enforceable Process

- 1. Process servers will serve non-enforceable process in accordance with Florida Statutes. Non-enforceable process includes summons, subpoenas, complaints, etc. A comprehensive list of non-enforceable process is available in the Civil Process Unit.

P. Encountering Resistance

1. Deputies encountering resistance while involved in the service of process will respond in accordance with Procedure 500.54 Response to Resistance. Civilian process servers encountering resistance during the service of process will remove themselves from the situation, retreat to a position of safety and advise the supervisor immediately.

## DEFINITIONS

**CERTIFIED COPY** – A copy of a document signed and verified to be true by the clerk whose custody the original is entrusted.

**COURT ORDER** – An order or judgment issued by a court of competent jurisdiction in and for Hendry County, Florida or any other Florida Court

**DEFENDANT/RESPONDENT** – The person defending or denying. The party against whom relief or recovery is sought in an action or suit.

**DOMESTIC VIOLENCE INJUNCTION** – Civil orders that direct the respondent to either do or not do specific acts. They are described in Florida Statute 741.30, and may be obtained by persons who were, or reasonably believe they may become, the victims of “domestic violence”, as defined in Florida Statute 741.28. If a person violates a domestic violence injunction in a manner described in Florida Statute 741.31, he or she may be criminally charged. Otherwise, violating the injunction is a civil matter, and the issuing Judge may cite the violator for contempt of court. Petitioners may apply for these injunctions at the Clerk of Courts office.

**EX PARTE ORDER** – An order from the court directing the Sheriff to take into custody an individual and transport them to a medical facility for evaluation or treatment.

**FOREIGN PROCESS** – All process issued outside of the State of Florida.

**NOTICE OF HEARING** – A notice to appear at a specific time and place.

**PLAINTIFF/PETITIONER** – A person who brings an action; the party who complains or sues.

**PROCESS** – The paper notification from a court that compels an individual to perform an action such as appear as a witness, produce evidence, or relinquish property. The definition of process also includes Enforceable Writs.

- Service of Process – The process is merely served upon the named person. No other action is taken by the person serving the process other than notifying the Civil Process Section of the service.
- Execution of process – The Sheriff is specifically directed by a court to use his lawful authority to enforce the provisions of a writ, order or other process and the Sheriff or his deputy enforces the provisions as directed.

**PURGE** – A monetary amount affixed to the non-support warrant indicating either the amount owed or the amount needed to be released from jail. Information on how to resolve the charge and/or avoid being arrested.

**REPEAT VIOLENCE INJUNCTION** – Civil orders that direct the respondent to either do or not do specific acts. They may be obtained by persons who are victims of “repeat violence”, as defined in Florida Statute section 784.046. If a person violates a repeat violence injunction in a manner described in Florida Statute section 784.047, he or she may be criminally charged. Otherwise, violating the injunction is a civil matter, and the issuing Judge may cite the violator for contempt of court. Petitioners may apply for these injunctions at the Clerk of Courts Office.

**RETURN** – A short written account of the manner in which the process was executed. The return is evidence to the court that the defendant/respondent has been served.

**RISK PROTECTION ORDER** – A civil order that is enacted by “Majority Stoneman Douglas Public Safety Act”, which is designed to prevent person who are at high risk of harming themselves or others from accessing or possessing firearms or ammunition, as defined in Florida Statute 790.401.

**SUBPOENA** – Process, of which attendance of a witness is required, may be either civil or criminal. If records are involved, it is known as a Subpeona Duces Tecum. May be served by any person who is not a party to the suit, and is age 18 or over.

**SUBPOENA DUCES TECUM** – Commands the person to whom it is directed to produce the books, paper, documents or tangible items designated therein and to produce it at trial.

**SUMMONS** – Includes a complaint or pleading on the part of the plaintiff stating facts and demanding relief. Issued by a court directing the sheriff to summon a named party (usually the defendant) to appear before the court on a specific date, or within a specified number of days to file a written answer, commonly known as a 20-day summons. The summons is accompanied with a complaint affidavit, petition or initial pleading that explains the cause of action.

**USUAL PLACE OF ABODE** – Current residence of the person that is to be served.

**VIOLENCE** – Any assault, battery, sexual battery, or stalking by a person against any other person.

**WRIT** – A judge’s written order requiring an action outside the courtroom authorizing that action. A writ is usually directed to a Sheriff for service or execution.

- Non-Enforceable Writ – an order issued by a court that does not specifically direct the Sheriff to take action against a person or property. A deputy or process server can only make service on this type writ and cannot take enforcement action.
- Enforceable Writ – an order issued by a court directing the Sheriff to take physical action against someone or something by seizing property or taking a person into custody. An enforceable writ will only be executed by a sheriff or his deputy.

**WRIT OF BODILY ATTACHMENT / ORDER OF ARREST** – A civil court order only issued by a judge, commanding the Sheriffs of the State of Florida to attach a body (arrest an individual), and deliver the person to a judge during regular court hours, or on the next working day after the person is incarcerated.

**WRIT OF EXECUTION** – The culmination of a court action whereby the plaintiff has obtained a money judgment against one or more individuals, a partnership, or corporation. It commands the Sheriff to seize (levy) the goods of the entity or person(s), usually the defendant, sell them at a public sale, then turn the proceeds over to the plaintiff to satisfy the judgment.

**WRIT OF POSSESSION** – Commonly referred to as an eviction. It is the final step in the process whereby the plaintiff regains possession of real property, such as a house, apartment or business location from a tenant. The writ can be issued for failure to pay rent, mortgage foreclosure, or any other reason for which the property owner wishes to recover residential or commercial property from the tenant.

**WRIT OF REPLEVIN** – An order from the courts directed to the Sheriff to take goods or property from someone and return it to the rightful owner or lien holder.

## REFERENCES

State/Federal Regulations:

Florida Statute 48.031

Florida Statute 48.051

Florida Statutes 56

Florida Statute 741.28



Florida Statute 741.30  
Florida Statute 741.31  
Florida Statute 784.046  
Florida Statute 784.047  
Florida Statute 790.401

CFA:

CFA Standard 5.06M, 24.01M, and 24.02M

Forms:

None

Other Policy/ Procedure References:

500.10 Criminal Process Procedures

500.54 Response to Resistance